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YEAP BOON HAI

v.

PP

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FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ (MALAYA)
MOHD GHAZALI YUSOF FCJ
JAMES FOONG FCJ
[CRIMINAL APPEAL NO: 05-4-2008(B)]

C

6 JANUARY 2010

CRIMINAL LAW: *Penal Code - Section 302 - Causing death of deceased - Whether accused committed murder - Family members killed in shophouse fire started by accused - Time and manner in which fire*

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was started was so imminently dangerous to human life and in all probability would cause death - Death approximated to a practical certainty - Whether prima facie case for murder proven within the definition of murder under s. 300 of the Penal Code

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CRIMINAL PROCEDURE: *Defence - Explanation by accused - Accused charged with murder - Family members killed in shophouse fire started by accused - Whether defence that fire was caused by a third party was probable - Existence of third party never mentioned to investigating officer and never raised in cross-examination of prosecution's*

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witnesses but raised for first time during defence case - Whether defence can succeed

The appellant was charged with six counts of murder, by causing the death of six persons on 14 April 1997, at about 3.50am in a shophouse ("the shophouse"). The victims were the appellant's

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mother in law, maternal uncle, wife, niece in law, brother in law and son. The six victims perished in a fire that engulfed the shophouse. There was no eye-witness who saw the appellant start the fire. The evidence proffered by the prosecution was entirely circumstantial. PW7, a nurse, who was staying in the house

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opposite the shophouse testified that at about 3.30am on 14 April 1997, she saw the appellant descending the staircase on the right of the shophouse. PW7 testified that at that time the shophouse was already on fire and the appellant was alone and appeared to be in a hurry. According to PW7, the appellant always quarreled

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with his wife. PW9 (the petrol station attendant) gave evidence that on 14 April 1997 at about 2.30am, the appellant bought petrol in four empty plastic containers from his petrol station.

PW13 and PW14, the appellant's brother in law and sister in law, who were staying in the shophouse testified that on the evening of 13 April 1997, the appellant had a series of quarrels with his wife, his mother in law and his brother in law. The quarrel started when the wife asked the appellant for a divorce. The appellant got furious when the wife chased him out of the shophouse as she claimed it belonged to her. PW6 (the Government Chemist) gave evidence that he found petrol in a white plastic container which he received as exhibit. The officer of the Fire Service Department (PW15) testified that the fire was caused by inflammable substances such as petrol. In his defence, the appellant stated that on the date in question he had an argument with his wife and had therefore asked his Indonesian employee called Yu to destroy all the machines in the shophouse. According to the appellant, Yu later told him that Yu had burned the machines in the shophouse. This appeal by the appellant was against the decision of the Court of Appeal whereby his appeal against his convictions and sentences imposed by the High Court was dismissed. The issues raised before the Federal Court were: (i) whether the circumstantial evidence was sufficient to convict the appellant; and (ii) whether on the evidence adduced, the act of the appellant fell within the definition of murder in s. 300 or culpable homicide in s. 299.

Held (dismissing the appeal)
Per Arifin Zakaria CJ (Malaya) delivering the judgment of the court:

(1) The finding by the trial judge that the fire was caused by petrol and the appellant started the fire was based on actual evidence and corroborated in material particulars by inference reasonably and properly drawn from other evidence before the Court. (para 17)

(2) The appellant in his defence tried to push the blame for the fire on his worker by the name of Yu. The existence of Yu was never mentioned to the investigating officer and never raised in the cross-examination of the prosecution's witnesses. It was raised for the first time during the defence case. Thus, the trial Judge had rightly rejected the appellant's defence. As such, there was no merit on the first ground of appeal. (paras 18 & 19)

(3) The appellant may have had no intention to cause the death or any bodily injury as was likely to cause death to the occupiers of the shophouse but judging from the time and manner in which the fire was started, in all circumstances it was so imminently dangerous to human life and that in all probability it would cause death. In the circumstances, death approximated to a practical certainty. The appellant started the fire to the shophouse in the early hours of the morning knowing full well that the shophouse was occupied by so many people including his own wife and children. His act had put the lives of so many innocent people in grave danger. His act was so imminently dangerous and that in all probability it would cause death. His act fell squarely within the definition of murder under s. 300 of the Penal Code. (paras 23 & 24)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah dituduh atas enam tuduhan membunuh, menyebabkan kematian enam orang pada 14 April 1997, pada pukul 3.50 pagi di dalam satu rumah kedai ('rumah kedai'). Mangsa–mangsa adalah ibu mertua, pak cik, isteri, anak saudara, abang mertua dan anak lelaki perayu. Keenam-enam mangsa mati dalam kebakaran yang telah menyelubungi rumah kedai itu. Tiada saksi yang menyaksikan perayu memulakan kebakaran. Keterangan yang diberikan oleh pihak pendakwa hanya mengikut keadaan. PW7, seorang jururawat, yang tinggal di rumah yang berhadapan dengan rumah kedai itu, memberi keterangan bahawa pada pukul 3.30 pagi pada 14 April 1997, dia telah melihat perayu menurun tangga pada sebelah kanan rumah kedai. PW7 memberitahu bahawa pada masa itu, rumah kedai sudah terbakar dan perayu keseorangan dan dalam keadaan terburu-buru. Menurut PW7, perayu selalu bertengkar dengan isterinya. PW9 (pekerja stesen minyak) memberi keterangan bahawa pada 14 April 1997, pukul 2.30 pagi, perayu telah membeli minyak dalam empat bekas plastik kosong dari stesen minyaknya. PW13 dan PW14, abang mertua dan kakak mertua perayu, yang tinggal di rumah kedai itu, memberitahu bahawa pada petang 13 April 1997, perayu telah bertengkar dengan isterinya, ibu mertuanya dan abang mertuanya. Pertengkaran tersebut bermula apabila isteri perayu meminta cerai. Perayu naik marah apabila isterinya menghalaunya keluar dari rumah kedai itu dan mengatakan bahawa rumah kedai itu milik isterinya. PW6 (ahli kimia kerajaan) memberi keterangan yang dia telah menjumpai minyak dalam sebuah bekas plastik yang telah diterima sebagai eksibit. Pegawai di Balai Bomba (PW15) memberitahu bahawa

kebakaran itu disebabkan bahan mudah terbakar seperti petrol. Di dalam pembelaannya, perayu mengatakan bahawa pada tarikh tersebut, beliau telah bertengkar dengan isterinya dan telah mengarahkan pekerjanya dari Indonesia, Yu, untuk memusnahkan semua mesin dalam rumah kedai itu. Menurut perayu, Yu kemudian memberitahunya yang Yu telah membakar mesin-mesin dalam rumah kedai itu. Rayuan ini oleh perayu adalah terhadap keputusan Mahkamah Rayuan di mana rayuannya terhadap sabitan dan hukuman yang telah diarahkan oleh Mahkamah Tinggi dibuang. Isu-isu yang berbangkit di hadapan Mahkamah Persekutuan adalah (i) sama ada keterangan ikut keadaan adalah memadai untuk perayu disabitkan; dan (ii) sama ada melalui keterangan yang dikemukakan, perbuatan perayu jatuh di bawah takrif bunuh dalam s. 300 atau homisid salah dalam s. 299.

Diputuskan (menolak rayuan)
Oleh Arifin Zakaria HB (Malaya) menyampaikan penghakiman mahkamah:

(1) Penemuan hakim bicara bahawa kebakaran adalah akibat minyak petrol dan perayu yang telah memulakan kebakaran adalah atas dasar keterangan yang sahih dan disokong oleh butir-butir material dari inferens yang munasabah and telah diambil oleh keterangan yang lain di hadapan mahkamah.

(2) Perayu dalam pembelaannya menolak tanggungjawab kebakaran itu kepada pekerjanya yang bernama Yu. Kewujudan Yu tidakpun disebut kepada pegawai penyiasat dan tidak timbul di dalam periksa balas saksi-saksi pihak pendakwa. Ia hanya dibangkitkan untuk pertama kalinya semasa kes pembelaan. Oleh itu, hakim bicara tidak salah apabila tidak menerima pembelaan perayu. Tiada merit di dalam alasan pertama rayuan ini.

(3) Perayu mungkin tidak ada niat untuk menyebabkan kematian atau kecederaan badan yang boleh membawa kepada kematian atas penduduk-penduduk rumah kedai itu tetapi apabila melihat masa dan cara kebakaran dimulakan, dalam keadaan keseluruhannya, ia adalah terlampau bahaya kepada nyawa manusia dan kebarangkalian besar akan menyebabkan kematian. Di dalam keadaan sedemikian, kematian adalah satu kepastian yang praktik. Perayu telah memulakan kebakaran pada rumah kedai itu pada awal pagi dan beliau sedar dan mengetahui bahawa rumah kedai itu diduduki oleh ramai orang termasuk

A isteri dan anaknya. Tindakannya telah membahayakan nyawa-nyawa mereka yang tidak bersalah. Tindakannya terlampau bahaya dan kebarangkalian keseluruhan akan menyebabkan kematian. Perbuatan perayu terjatuh di bawah definisi bunuh di bawah s. 300 Kanun Keseksaan.

B **Case(s) referred to:**
Chan Chwen Kong v. PP [1962] 1 LNS 22 HC ***(refd)***
Chang Kim Siong v. PP [1967] 1 LNS 18 FC ***(refd)***
Hyam v. Director of Prosecutions [1975] AC 55 HL ***(refd)***
Jayaratnam v. PP [1982] 2 MLJ 307 ***(refd)***
C *Kalegura Padma Rao & Anor v. The State of AP AIR [2007] SC 1299* ***(refd)***
Ruli Ram v. State of Haryana AIR 2002, 3360 ***(refd)***
Tham Kai Yau & Ors v. PP [1976] 1 LNS 159 FC ***(refd)***

D **Legislation referred to:**
Penal Code, ss. 299, 300

For the appellant - Mohd Firuz Jafril; M/s Firuz Jafril, Aidil & Zarina
For the respondent - Saiful Edris Zainuddin DPP

E *[Appeal from Court of Appeal; Criminal Appeal No: B-05-53-2001]*

Reported by Amutha Suppayah

JUDGMENT

F **Arifin Zakaria CJ (Malaya):**

Introduction

[1] This is an appeal by the appellant against the decision of the G Court of Appeal delivered on 10 December 2007 whereby his appeal against his convictions and sentences imposed by the High Court was dismissed.

[2] The appellant was charged with six counts of murder, by H causing the death of six persons on 14 April 1997, at about 3.50am in a shophouse at No 450A, Jalan 18/2A, Taman Seri Serdang, Hulu Langat, Selangor ("the shophouse"). The six charges relate to the death of the following victims namely:

(i) Koh Seik Lang (the appellant's mother-in-law);

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(ii) Khor Chai Peng (the appellant's maternal uncle);

(iii) Kee Sok Kiang (the appellant's wife);

(iv) Khor Khim Im (the appellant's niece-in-law);

(v) Kee Kim Hup (the appellant's brother-in-law); and

(vi) Yeap Cheok Wei (the appellant's son).

The Facts

[3] The charges against the appellant arose out of the fire that gutted the shophouse. Six victims perished in the said fire, which included the appellant's wife and son. There was no eye-witness who saw the appellant start the fire. The evidence proffered by the prosecution is entirely circumstantial in nature; this may be summarized as follows:

(a) First the evidence of PW7, a nurse by profession who was staying in the house opposite the shophouse. She testified that at about 3.30am on 14 April 1997, she switched on the light of her toilet, which was facing the shophouse, as she wanted to go to the toilet, she saw the appellant who was wearing a white shirt. She saw the appellant from about three to four meters distance. He was seen descending the staircase on the right of the shophouse. At that time the shophouse was already on fire. She said she could recognize the appellant as she had seen him before. The appellant was alone and appeared to be in a hurry. In cross-examination, she referred to the appellant as "orang gila" because he always quarrel with his wife whenever he was at home.

(b) Next, we have the evidence of PW9 (the petrol station attendant). He gave evidence that on 14 April 1997 at about 2.30am, the appellant came to the petrol station to buy petrol. He had with him four empty plastic containers. After filling up the four containers, he paid for it with a RM50 note and PW9 gave him back RM30 as change. The appellant then asked him to send him to his car, which he did using his motorcycle. He said two of the containers were placed in the basket of motorcycle and the other two were held by the appellant. After sending the appellant as requested, he did not know what happened further. Later on he attended an identification parade at which he identified the appellant as the person who came to buy petrol on 14 April 1997.

A (c) PW13 and PW14, the appellant's brother-in-law and sister-in-law, who were staying in the shophouse testified that on the evening of 13 April 1997, the appellant had a series of quarrels with his wife, his mother-in-law and his brother-in-law (Kee Kim Hup). The quarrel started when the wife asked the
B appellant for a divorce. The appellant got furious when the wife chased him out of the shophouse as she claimed it belongs to her. He claimed the shophouse was his and threatened to make his brother-in-law a bankrupt when asked to leave the shophouse. He refused to leave and said that he
C wanted to be there for three more days to be with his children. During the quarrel, the appellant's mother, two elder sisters and a younger brother were present. They left at around 12am. The appellant stayed back in the shophouse.

D (d) PW12 who runs a photocopying business at No 449, Jalan Susur 18/2A, Taman Seri Serdang, next to the shophouse confirmed the evidence of PW7 that the appellant and his wife often quarrelled and on 14 April 1997 at about 3.30am, he heard a loud noise coming from a car leaving the shophouse.
E He also heard the sound of broken glass.

(e) With regard to the cause of the fire, we have the evidence of PW6 (the Government Chemist) who gave evidence that he received several exhibits from PW18 which includes a white
F plastic container with a cover. He found 280ml of black liquid with pinkish tint. Upon analysis he confirmed the liquid was petrol which, being exposed, had extensively evaporated. The liquid contained carbon particles.

(f) The operations officer of the fire service department (PW15),
G who was responsible for the operation in putting out the fire on the day in question testified that the fire was caused by inflammable substances such as petrol which had spread through the staircase to the bottom. He was certain it was caused by a liquid chemical that was why it spread very
H quickly.

(g) The cause of death of the six victims as given by the pathologist (PW8) was smoke inhalation, this is based on his finding that their organs showed signs of soot.

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Finding Of High Court

[4] At the end of the prosecution case, the learned High Court judge held that the prosecution had made out a *prima facie* case and the appellant was called upon to enter his defence. In his defence, the appellant stated that on the date in question he went to the shophouse together with his Indonesian employee called Yu. While waiting for his wife to return to the shophouse, Yu told him he was feeling hungry. He gave him RM50 to buy food and told him not to return to the shophouse as he had had a quarrel with his wife. He confirmed that his wife had asked for a divorce and wanted to keep his children and the business.

[5] His mother, two elder sisters and a younger brother were present in the shophouse during the quarrel. His mother told him to let his wife have the business and after that his mother, sisters and brother left the shophouse. He told his mother he wanted to stay there for three days because he wanted to be with his children. After taking his bath, he played video games on the staircase. He said he was feeling sad and he had drank stout.

[6] He then remembered that his car had ran out of petrol. He went to the petrol station on foot to buy petrol. As he was feeling tired, he asked the employee of the petrol station to send him back. He said he was feeling sad and not in the mood to fill up the petrol tank. He then walked to Sekolah Menengah Kebangsaan Sri Serdang where he met Yu. The school was about 1km from the shophouse. He asked Yu to fill up the petrol tank. He also told Yu that he was not happy because the machines in the shophouse belong to him and he told Yu, if possible, to destroy all the machines. He told Yu the key to shophouse was in the car. About 20 to 30 minutes later, he saw the car being driven at a fast speed by Yu towards him. After stopping the car, Yu asked him to get into the car and he told the appellant that he could not drive the car because his hand was injured. He drove Yu to the construction site in Puchong. In the car, Yu told him that after filling up the car, there was some petrol left and he went into the shophouse and burned the machines in the shophouse. He told Yu that his wife and children were in the shophouse. He then wanted to turn back to the shophouse but Yu stopped him from doing so and Yu asked him to send him back first.

[7] After sending Yu back to Puchong he drove the car aimlessly. At Subang Jaya, he came across a 7-Eleven shop. At the shop, he bought 100 Panadol tablets, two tins of Carlsberg and 1 tin of Guiness Stout. In his house in Shah Alam, he swallowed 30 Panadol tablets and the beer, and after that he said he fainted. He was awakened by his elder sister and elder brother. The sister told him what had happened. He was told that his son Yeap Cheok Wai died in the fire but his daughter was safe. He felt hungry and asked his brother to buy him food. After he had eaten the brother took him to the police station. He maintained that he did not asked Yu to burn anyone in the shophouse and he did not ask Yu to set fire to the shophouse.

[8] After considering the defence evidence, the learned trial judge came to the conclusion that, based on the evidence before him, Yu never existed and because of that the appellant's story relating to the role played by Yu in burning the shophouse was rejected.

[9] The Court of Appeal having heard submissions of counsel came to the conclusion that the circumstantial and corroborative evidence is overwhelming and on that premise affirmed the finding of facts by the learned trial judge.

[10] On the issue of whether the appellant is guilty of murder or culpable homicide the Court of Appeal came to the conclusion that based on the various authorities considered by the court, the facts in the present case would support the findings of the High Court that the appellant was guilty of murder as charged.

The Issues Before This Court

[11] Two main issues were raised before us. Firstly, is the circumstantial evidence present in this case sufficient to convict the appellant for the offence charged?. Relying on *Chang Kim Siong v. PP* [1967] 1 LNS 18, *Jayaratnam v. PP* [1982] 2 MLJ 307 and *Chan Chwen Kong v. PP* [1962] 1 LNS 22 HC, learned counsel for the appellant contended that there is insufficient evidence to support a conviction for murder. He maintained that there are material gaps in the prosecution case which render the conviction unsafe. This centres on the evidence of PW6 and PW15. On PW6's evidence, he contended that PW6 in his evidence stated clearly that he could not determine the cause of the fire and where it started. As against this he said there is the evidence of PW13 and PW15. He contended that the trial judge and the

Court of Appeal failed to consider the evidence of PW13 who stated that when he was leaving the shophouse at 3.30am through the back door he said, "Saya ada melihat wayar yang terbakar. Masa saya lihat wayar terbakar, ia sudah patah. Saya lihat wayar itu sudah terbakar dan terjatuh." Whereas PW15, the operations officer of the Fire Department gave conflicting evidence. This was not considered by the courts below. In cross-examination he stated that "Punca kebakaran adalah di bawah bidangkuasa kimia. Saya tidak setuju apabila peguambela kata punca kebakaran tugas Bomba." Against this PW6, the chemist, testified that, "memandangkan keadaan kebakaran yang sudah begitu teruk saya tidak dapat pastikan punca kebakaran."

[12] However, despite his earlier statement that the cause of the fire is a matter for the chemist, PW15 in his evidence said that the fire was caused by an inflammable chemical. In his own words he stated:

> Dari segi pengalaman selama saya kerja selama 21 tahun sebagai Ahli Bomba dan juga Pegawai punca kebakaran adalah bahan kimia yang mudah terbakar. Saya kata begitu setelah kenal pasti keadaan bangunan tersebut. Lepas kebakaran ada tanda-tanda yang boleh dikenal pasti.
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> Kesemua bangunan musnah sama sekali dalam jangka masa yang tidak lama. Api cepat merebak. Terdapat juga tanda-tanda di dinding bangunan dan bahan-bahan yang terbakar.
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> Keseluruhan bangunan yang terbakar hitam dan barang yang terbakar hancur dalam masa yang singkat.
>
> Untuk bezakan samada bahan kimia atau letrik yang sebabkan kematian ialah bahan kimia cepat merebak. Letrik lambat merebak.
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> Dari pemerhatian saya di tempat kejadian ia tidak boleh dikatakan berpunca dari letrik. Keenam-enam mangsa yang dijumpai telah diserahkan kepada polis untuk diuruskan.

In re-examination he emphatically stated that he is convinced that the cause of the fire is an inflammable chemical.

[13] On the question of the alleged contradiction in PW15's, evidence the Court of Appeal observed as follows:

> [29] In the instant appeal, we are unable to identify any contradiction in SP15's evidence. The learned trial Judge has had the audio visual advantange. He is entitled to accept the evidence of SP15 as credible. As a matter of fact, SP15's evidence that

A the six victims died as the direct result of the fire is consistent with and corroborated by the medical findings of the pathologist (SP8) that the six victims' respective organs showed signs of soot, thereby confirming that smoke inhalation was the cause of death and the fact that the fire was caused by the petrol was
B corroborated by the evidence of the petrol station attendant (SP9) who had sold the petrol to the accused. There is no plausible reason for a public officer such as SP15 to lie in Court and risk perjury, particularly in a trial involving capital punishment: see eg. *PP v. David Ackowuah Bonsu* [1999] 2 CLJ 677 HC per Hishamudin Yunus J.

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The learned High Court judge and the Court of Appeal had analysed the evidence of PW6 and PW15 and they came to the conclusion that there was no conflict between the two. It is true that PW15 did say that the cause of fire is within the purview of
D the chemistry department and not that of his department. But in this case the chemist PW6 when asked about the cause of the fire in no uncertain terms said that he cannot determine the cause of fire because the effect of the fire was too extensive. To quote his words:

E Memandangkan keadaan kebakaran yang sudah begitu teruk saya tidak dapat pastikan punca kebakaran.

[14] In this regard we have to bear in mind that the chemist only examined the charred remains of the fire. He was not present
F during the fire.

[15] PW15 on the other hand was present at the scene of the fire and helped to put out the fire. His evidence as to what he observed and smelt at the material time is highly pertinent and
G relevant to the fact in issue. Based upon that he expressed his opinion as to the likely cause of the fire. This is premised upon the facts that the fire spread rapidly and there was smell of petrol. He also noticed that the petrol had seeped through the staircase to the bottom and this had facilitated the spread of the fire.

H **[16]** Together with this, we have the evidence of PW9, the petrol station attendant, who sold RM20 of petrol to the appellant. He told the court that the appellant used four containers for the petrol. PW9 also helped sent the appellant to his car. This took place at around 2.30am on 14 April 1997. A
I neighbour, PW7, testified that at around 3.30am on 14 April 1997

when she got up to go to the toilet she heard some commotion at the back of her house. She noticed there was fire in the shophouse. She also saw the appellant leaving the shophouse in a hurry. The appellant was alone.

[17] Considering all the evidence before the court, the learned trial judge came to his finding that the fire was caused by petrol and that the appellant started the fire. We agree with the Court of Appeal that in the circumstances the finding of learned trial judge should not be disturbed as it was based on actual evidence and corroborated by material particulars by inference reasonably and properly drawn from other evidence before the court. This finding we hold is fully supported by the evidence before the court.

[18] The appellant in his defence tried to push the blame for the fire on his worker by the name of Yu. The existence of Yu was never mentioned to the investigating officer and never raised in the cross-examination of the prosecution's witnesses. It was raised for the first time during the defence case.

[19] For those reasons the learned trial judge held that it was a mere fabrication. We agree with the Court of Appeal that the trial judge had, in the circumstances, rightly rejected the appellant's defence. On the above premises we find that there is no merit on the first ground of appeal raised herein.

Whether s. 300 or s. 299 Of The Penal Code Should Apply

[20] The next issue is, whether on the evidence adduced, the act of the appellant falls within the definition of murder in s. 300 or culpable homicide in s. 299. Applying *Tham Kai Yau & Ors v. PP* [1976] 1 LNS 159 FC, the Court of Appeal held that in starting the fire by means of petrol clearly brought about enormous degree of risk to the lives of the occupants. Thus the court ruled that:

> ... the death caused thereby is not just a likely result. It is certainly the most probable result. It is therefore murder.

In *Tham Kai Yau (supra)*, Raja Azlan Shah FJ (as his Royal Highness then was) explained the distinctions between the provisions of s. 299 and s. 300 of the Penal Code. He said:

> Section 299, Penal Code enacts that a person commits culpable homicide, if the act by which the death is caused is done: (a) with the intention to cause death; (b) with the intention of causing such

A bodily injury as is likely to cause death; (c) with the knowledge that … the act is likely to cause death.

Section 300, Penal Code defines murder as follows. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done: (1) with the intention of
B causing death; (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; (3) with the intention of causing such bodily injury to any person, and … is sufficient in the ordinary course of nature to cause death; (4) with the
C knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

The words which I have italized show the marked differences between the two offences. Where there is an intention to kill, as
D in (a) and (1), the offence is always murder. Where there is no intention to cause death or bodily injury, then (c) and (4) apply. Whether the offence is culpable homicide or murder depends upon the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder.
E Illustration (d) of s. 300, Penal Code is a case of this description. Where the offender knows that the particular person injured is likely, either from peculiarity of constitution, immature age, or other special circumstances, to be killed by an injury which would not ordinarily cause death, it is murder. Illustration (b) of s. 300, Penal Code is a good example. The essence of (b) and (3) is
F this. It is culpable homicide if the bodily injury intended to be inflicted is likely to cause death; it is murder, if such injury is sufficient in the ordinary course of nature to cause death. Illustration (c) given in s. 300, Penal Code is an example. It is on a comparison of these two limbs of s. 299 and s. 300 that
G the decision of doubtful cases as the present must generally depend. The distinction is fine, but noticeable. In the last analysis, it is a question of degree of probability.

[21] Ratanlal & Dhirajlal's *Law of Crimes*, a commentary of the Indian Penal Code, 1860, 26th Ed. writing on cl. 4 of s. 300
H which is similar to s. 300 of our Penal Code stated:

Clause 4 applies to a case of dangerous action without an intention to cause specific bodily injury to any person. The distinction between the first three clauses and the last clause is that whether in the former there is an intention to kill or to cause
I bodily injury, in the latter there is no such intention. It is designed to cover cases in which the agent not intending to cause death or to cause such bodily injury as is likely to cause death,

has, nevertheless, caused death by an act knowing that it is so imminently dangerous that in all probability it will cause death.

[22] In *Kalegura Padma Rao & Anor v. The State of A.P.* AIR 2007 SC 1299, at p. 1305, the Supreme Court observed:

> It will be sufficient to say that clause (4) of s. 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

(See further *Ruli Ram v. State of Haryana* AIR 2002, 3360.)

[23] Applying the above guiding principles to the present case we are of the view that both the High Court and Court of Appeal had come to the right decision having regard to the facts as found by them. The appellant in this case may have no intention to cause the death or any bodily injury as is likely to cause death to the occupiers of the shophouse but judging from the time and manner in which the fire was started, in all circumstances we are satisfied that it is so imminently dangerous to human lives and that in all probability it will cause death. In the circumstances death approximates to a practical certainty.

[24] In the case of *Hyam v. Director of Prosecutions* [1975] AC 55 HL, a case cited by the Court of Appeal, the House of Lords held by majority of 3 - 2 that a person who, without intention to endanger life, did an act knowing that it was probably that grievous, in the sense that serious bodily harm would follow was guilty of murder if death resulted. In that case the facts were that the female appellant had a relationship with a man who became engaged to be married to B. In the early hours of 15 July 1972, the appellant went to B's house and poured petrol through the letter box, stuffed newspaper through and lit it. She gave B no warning but went home leaving the house burning. B escaped but her two daughters died of suffocation. The appellant was charged with their murder. Her defence was that she set fire to frighten B so that she would leave the neighbourhood. She was convicted of murder and her appeal against conviction was dismissed by the Court of Appeal and the House of Lords.

[25] The facts in the present case are no different to the case of *Hyam*: the appellant started the fire to the shophouse in the early hours of the morning knowing full well that the shophouse was occupied by so many people including his own wife and children. His act had put the lives of so many innocent people in grave danger. In the circumstances it cannot be denied that his act was so imminently dangerous and that in all probability it will cause death. It is our finding, therefore, that his act falls squarely within the definition of murder under s. 300 the Penal Code.

Conclusion

[26] For the above reasons, we find no merit in this appeal, the appeal is therefore dismissed and the convictions and sentences imposed by the High Court are hereby affirmed.